



Docket No.: SON-2058  
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Yasumasa Mizushima et al.

Confirmation No.: 9700

Application No.: 09/980,252

Art Unit: 3627

Filed: February 21, 2002

Examiner: Ronald Laneau

For: CONCENTRATED PHYSICAL  
DISTRIBUTION SYSTEM  
FOR CARGO AND METHOD THEREFOR

**PETITION UNDER 37 C.F.R. § 1.181  
TO REQUEST WITHDRAWAL OF FINAL OFFICE ACTION**

MS AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby petitions for withdrawal of finality of the Office Action of May 18, 2007.

Applicant, seeking review of the prematureness of the final rejection within the Final Office Action, respectfully requests reconsideration of the finality of the Office Action for the reasons set forth hereinbelow. See M.P.E.P. §706.07(c).

This is a petitionable issue because Applicant seeks review of the prematureness of the final rejection within that Office Action.

The “second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement” (emphasis added). M.P.E.P. §706.07(a).

### **Argument**

The non-final Office Action mailed on January 3, 2007 indicates that claims 37-43 were rejected under 35 U.S.C. §103 as allegedly being obvious over U.S. Patent Application Publication No. 2005/0091089 to Bjerre.

**No amendment** to claims 37-43 is found within the Amendment in Response to Non-Final Office Action filed on February 16, 2007.

Nevertheless, paragraph 6 of the Final Office Action of April 17, 2007 includes a rejection of claims 37-43 under 35 U.S.C. §103 as allegedly being obvious over U.S. Patent No. 6,151,588 Tozzoli et al. (Tozzoli). Paragraph 8 of the Final Office Action **admits** that the rejection found within paragraph 6 is a **new ground of rejection**.

Thus, the new rejection of claims 37-43 made within the Final Office Action is a new ground of rejection that is neither necessitated by applicant's amendment of claims 37-43 nor based on information submitted in an information disclosure statement.

Accordingly, the finality of the rejection of claims 37-43 made within the Final Office Action is **premature** at least for this reason.

"If, on request by applicant for reconsideration, the primary examiner finds the final rejection to have been premature, he or she should withdraw the finality of the rejection." M.P.E.P. §706.07(d).

Accordingly, Applicant hereby petitions the Commissioner under 37 C.F.R. §1.181 to direct the examiner to withdraw the finality of the Office Action mailed in the above-identified application on April 11, 2007.

### **Fees**

**No fee** is believed required to support this petition. See 37 C.F.R. §1.181.

However, if any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

For any comments or suggestions that could place this application in even better form, please telephone Brian K. Dutton, Reg. No. 47,255, at 202-955-8753.

Dated: August 9, 2007

Respectfully submitted,

By 

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